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SCHERING-PLOUGH CORPORATION  
PATENT DEPARTMENT (K-6-1 1990)  
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KENILWORTH NJ 07033-0530

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SEP 30 2005

**OFFICE OF PETITIONS**

In re  
Venkatraman, et al.  
Application No. 09/836,636  
Filed: April 17, 2001  
Patent No. 6,914,122  
Issue: July 5, 2005

: DECISION ON APPLICATION  
: FOR PATENT TERM ADJUSTMENT  
: AND NOTICE OF INTENT  
: TO ISSUE  
: CERTIFICATE OF CORRECTION

This is a decision on the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT", filed July 20, 2005. Applicants request that the patent term adjustment under 35 U.S.C. 154(b) be corrected from three hundred seventy-three (373) days to four hundred six (406) days.

The application for patent term adjustment is GRANTED to the extent indicated herein.

The patent term adjustment indicated on the patent is to be corrected by issuance of a certificate of correction showing a revised Patent Term Adjustment of **four hundred eighty-three (483)** days.

On March 10, 2004, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment (PTA) to date is one hundred thirty-two (132) days. On March 23, 2004, applicants timely<sup>1</sup> submitted an application for patent term adjustment, asserting that the correct number of days of PTA at the time of the mailing of the Notice of Allowance was four hundred six (406) days.

The application for patent term adjustment was granted in part in a decision mailed on April 6, 2005. The decision explained that as of the mailing date of the Notice of Allowance, applicants were entitled to a patent term adjustment of two hundred fifteen (215) days (249 days of PTO delay, reduced by 34 days of applicant delay). However, applicants' request that additional PTO delay of one hundred fifty-seven (157) days be assessed due to a projected issue date of September 21, 2004 was held in abeyance until after the actual patent date.

On July 20, 2005, the patent issued with a patent term adjustment of three hundred seventy-three (373) days (444 days of PTO delay, reduced by 154 (120+34) days of applicant delay). The adjustment of one hundred twenty (120) days and the PTO delay of 444 days are at issue.

Pursuant to 37 C.F.R. § 1.704(e), an application for patent term adjustment will not be considered a "failure to engage" under 37 C.F.R. § 1.704(c)(10). Accordingly, the delay of 120 days is incorrect.

In addition, the PTO delay of 444 days is incorrect. As set forth in the first decision on PTA mailed April 6, 2005, as of the date of mailing of the Notice of Allowance, PTO delay was 249 days. In addition, PTO delay of two hundred sixty-eight (268) days should have been assessed pursuant to 37 C.F.R. § 1.703(a)(6) for failure of the Office to issue the patent within four months from the receipt of the issue fee.

In view thereof, the correct determination of patent term adjustment at the time of the mailing of the Notice of Allowance is **four hundred eighty-three (483) days** (517 days of PTO delay reduced by 34 days of applicant delay).

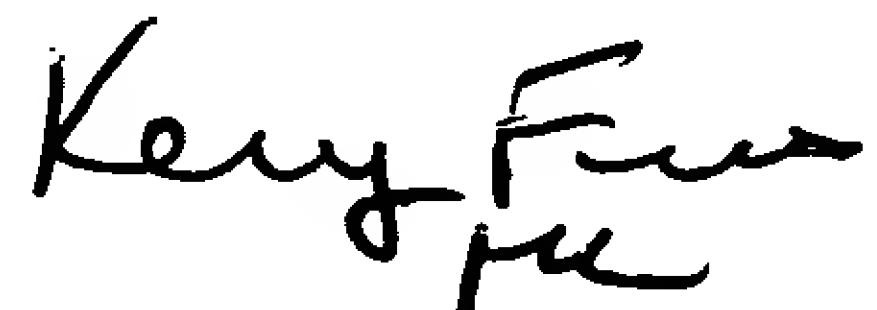
No fee is required and none has been charged.

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<sup>1</sup> PALM records indicate that applicants paid the issue fee on March 31, 2004.

The application file is being forwarded to the Certificate of Correction Branch for issuance of a certificate of correction in order to rectify the error regarding the patent term information. See 35 U.S.C. § 254 and 37 CFR 1.322. The certificate of correction will indicate that the term of the above-identified patent is extended or adjusted by **four hundred eighty-three (483)** days subject to any disclaimers.

Telephone inquiries specific to this matter should be directed to Cliff Congo, Petitions Attorney, at (571)272-3207.



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Office of Deputy Commissioner  
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Enclosure: draft Certificate of Correction